

FILING FOR DIVORCE CAO Instruction # 3

Summary of Steps

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Step 1: Talk to an Attorney, if Possible.

These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. We always recommend you talk to a lawyer about your problem before filing your action. If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork for a lesser cost. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500) for the name of an attorney in your area who will provide an initial consultation for no more than \$35. Also contact the Idaho State Bar or your Court Assistance Office for information about limited services representation. If you cannot afford these costs, there are also limited free legal services available to low income people. Contact the Court Assistance Office for their "Legal Services Directory" for information about resources for low-income people. Even if you do not hire a lawyer to represent you throughout the proceeding, a lawyer can look over your paperwork, give you advice on how to present your evidence, and tell you whether this type of action is right for you.

Step 2: Obtain and Complete the Required Forms.

You will need to obtain the following forms to file for Divorce:

- Complaint for Divorce, CAO 1-2 (with Minor Child/ren) or CAO 1-3 (No Minor Child/ren)
- Summons, CAO 1-1B (with Minor Child/ren) or CAO 1-1 (No Minor Child/ren)
- Certificate of Divorce or Annulment, available from Court Clerk or at the Court Assistance Office, not available on-line
- Family Law Case Information Sheet

If you have minor children of this marriage you will **also** need:

- Order to Attend Divorce Orientation/ Parenting Workshop
- Child Support Affidavit, CAO 1-11
- Child Support Worksheet, CAO 1-12 or 1-13
- Parenting Plan, CAO 6-3

If you do not know where your spouse lives, you will **also** need:

- Affidavit and Motion for Service by Publication, CAO 1-7
- Order for Service, CAO 1-8
- Summons by Publication, CAO 1-1A
- Affidavit of Mailing Per Order for Publication, CAO 2-3

Complete the forms you need. At the top left-hand corner of page 1 of each form fill in your name, address, and telephone number. Fill in the county and judicial district in the heading in capital letters (for example, "IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF CASSIA"). Fill in your names in the caption (for example, "John Doe , Plaintiff vs. Mary Doe, Defendant"). Fill out the remainder of each individual form, providing the information requested. If specific instructions are provided for a particular form, follow those instructions.

The Child Support Affidavit and Worksheet can be generated for you if you use the "Support" software at the Court Assistance Office, some Divorce Parenting Workshops, or elsewhere. You will need to bring information with you about your family income, work-related childcare expenses, and health insurance premiums.

Make 2 copies of the Parenting Plan so you can attach one to your complaint, and have the original to attach to the decree.

Some of the forms must be signed by you in the presence of a notary public. You can often locate a Notary at a bank, or insurance, real estate or payroll offices.

Step 3: Make Copies and File with the Clerk.

Assemble the forms following the instructions with the Complaint. Make two copies of each completed set of CAOP forms. (You will not need copies of the Certificate of Divorce nor of the Family Law Case Information Sheet.) Place the copies underneath each original.

Go to the window in the Clerk's Office. Give the Clerk the following:

Filing fee (\$123.00 as of July 1, 2005) or a *Motion and Affidavit for Fee Waiver*, CAO 1-10A, and the original and a copy of a proposed *Order Re: Fee Waiver*, CAO 1-10B.

The completed originals and copies of the your forms.

If you have minor children of this marriage the Clerk will give you an Order to Attend a parenting program, which may be called "Divorce Orientation", "Mediation Orientation" or "Parenting Workshop", depending on the district you are in. You will need to serve this Order on your spouse, along with the Summons and Complaint. Once your case has been filed, the Clerk will "conform" your copies by stamping and dating them. This will save you paying \$1.00 per page for copies of these documents from the court file later on, and will provide proof of the filing of the documents in case they become misplaced from the court file. The Clerk will hand you the Original Summons and the conformed copies of the Complaint packet and Summons.

Step 4: Obtain Service on Your Spouse.

You now need to serve the **Summons, Complaint (with attachments)**, (and order to attend parenting workshop, if applicable) on your spouse. There are three different ways you can do this. You only need to serve your spouse one of these ways. To avoid becoming confused read only the one which applies to your situation.

A. If your spouse **will** cooperate by accepting service:

1. Fill out an **Acknowledgment of Service**, CAO 2-1A, or 2-1X and make two copies.

2. Take or mail to your spouse the original and one copy of the **Acknowledgment of Service**, a conformed copy of the **Complaint**, and a conformed copy of the **Summons** (and parent workshop order, if any).
3. Have your spouse sign the original **Acknowledgment of Service** in the presence of a Notary Public.
4. Have your spouse return to you the original **Acknowledgment of Service**. Your spouse is to keep the copy of the **Acknowledgment of Service**, the conformed copy of the **Complaint**, and the conformed copy of the **Summons**.
5. Take the original and your copy of the **Acknowledgment of Service**, plus the original **Summons** back to the Clerk at the courthouse. Ask to have your copy of the **Acknowledgment of Service** conformed, the conformed copy will then be returned to you. The Clerk will keep and file the original **Summons** and **Acknowledgment of Service**.

B. If your spouse **will not** cooperate:

1. Deliver or mail the original Summons plus a copy of the **Summons**, a copy of the **Complaint** and an original **Affidavit of Service** to a sheriff, professional process server or other person over 18 in the county where your spouse lives, who will serve the papers. The sheriff or professional process server will need a letter stating where your spouse can be served, a description or photograph of your spouse, a description of the vehicle your spouse usually drives, and any other information that may help the process server locate and identify your spouse.
2. If using the sheriff or a professional process server, call first to find out what they charge for serving a Summons and Complaint in a divorce case, and include a money order or check for the correct amount when you send the papers.
3. The person who serves the forms will send the completed **Affidavit of Service** back to you with the original **Summons**. You should make a copy of the **Affidavit of Service** for yourself, file the original **Affidavit of Service** and the original **Summons** with the Court and have your copy of the Affidavit of Service conformed.

C. If you **do not know** where your spouse is:

There are separate instructions and forms for **Service By Publication**, CAO Instruction No. 8. Follow those instructions.

Step 5: Wait 20 Days.

Idaho has a mandatory 20-day waiting period between the **time your spouse was served** and **the time** you finalize your divorce if your divorce is entered by default. For this purpose, the date your spouse was served was either 1) the date s/he signed the acknowledgment of service form, or 2) the date the process server delivered the papers to your spouse, 3) the last date the papers were published in a newspaper. If you have minor children, you will need to attend the court's Parenting Workshop (called "Divorce Orientation" or "Mediation Orientation" in some districts) before you can finalize your divorce. The twenty-day waiting period and attendance at the parenting workshop (if applicable) are required for you to obtain a default divorce even if you **and your** spouse agree on all the issues in your divorce.

If your spouse does not respond to the court in writing within 20 days of receiving service, you may FINALIZE YOUR DIVORCE BY DEFAULT (see CAO Instruction #5.).

If your spouse does respond in writing, follow the steps below:

Step 6: Determine if a Reply is Necessary.

Read your spouse's response carefully. If your spouse's response was an "Answer", it is not necessary (or proper) for you to file a written reply. HOWEVER, If your spouse filed an "ANSWER AND COUNTERCLAIM", you will have 20 days from the date the counterclaim was served (**not** received by you) to file a written reply. If the document your spouse filed asks for something different from what you asked for in your complaint, it is a counterclaim even if it doesn't say counterclaim in the title and you will have to prepare and file a reply.

IF YOU DO NOT RESPOND BY THE APPROPRIATE DEADLINE, THE COURT MAY ENTER AN ORDER OF DEFAULT AGAINST YOU AND THE DEFENDANT MAY RECEIVE EVERYTHING REQUESTED IN THE COUNTERCLAIM.

If you agree with the Counterclaim, and do not object to the terms of the divorce proposed by your spouse, **it is not necessary for you to take any action** before the deadline. The court will send you a copy of the divorce Decree after it has been entered. But **if you disagree**, or are unsure about any of the allegations or terms in the counterclaim, you should **consult an attorney** as soon as possible to learn what your rights are and what course of action to take.

If you will be unable to see an attorney before the 20-day deadline, you may want to file a Reply to Counterclaim (CAO 3-4). This will at least prevent the entry of an Order of Default against you. Make two copies of your reply, file the original with the court clerk, and mail, fax or hand-deliver a copy to the defendant or the defendant's attorney at the address in the upper left corner of the first page of the Answer and Counterclaim. Be sure to complete the certificate of service at the end of the Reply form.

Step 7: Follow Notice of Status Conference, Scheduling Order or Other Court Orders.

Ordinarily, you will have a trial within six months if an Answer or Answer and Counterclaim have been filed. In the meantime, you will receive various notices and orders from the court concerning your divorce. If you have minor children, you will have already been served with an order to attend a parenting class. Other important papers you will receive may include Notice of Status Conference or Pre-trial Conference, Scheduling Order, or a Notice of Trial Setting. Read all court notices and orders carefully, and note the deadlines and hearing dates contained in them. **Failure to meet court deadlines or to appear at scheduled conferences, hearings or at trial may result in punishment for contempt of court or in other sanctions. Such failure may also cause you to lose all or part of your case.**

Step 8: Consider Negotiation, Mediation, or Other Means to Settle Your Case.

The overwhelming majority of civil cases, including divorce cases, settle before trial. You should attempt to settle your case with your spouse. You can discuss settlement in person with your spouse or his/her attorney, or you may submit a written settlement offer to your spouse or your spouse's attorney. You might also consider mediation. Mediation is a process in which a neutral third party (called a mediator) assists the parties in settlement negotiations. Mediation is often successful in resolving disputes concerning property and debt division, parenting schedules or child support. Your attorney, the court clerk or court assistance officer can give you a list of local mediators and more information about the mediation process.

There are other alternative means to settle your case without trial. These include arbitration and appointment of a special master. If negotiation or mediation does not resolve your case, you should consult an attorney about these alternative dispute resolution mechanisms.

If you do settle your case before trial follow CAO Instruction 5A to finalize your divorce by SWORN STIPULATION FOR ENTRY OF DECREE OF DIVORCE (CAO6-8). Fill out an appropriate DECREE, CAO 8-1 (if you have minor children) or CAO 8-3 (no children). You and your spouse must sign the Decree of Divorce to indicate that it's the one you want the judge to sign. There is room for this after the Clerk's Certificate of Service. Follow the detailed instructions for completing the Decree form. If you have children complete the Child Support Transmittal, CAO 1-14. You will need to ask the court clerk or court assistance officer whether a hearing will be required by your judge.

If your case does not settle before trial, see "Guidelines for Courtroom Behavior", CAO Instruction #12, for general information on how to proceed. **The trial will be conducted according to formal rules of evidence and procedure, so you should consult an attorney as to how to comply with those evidentiary and procedural rules and requirements.**

WARNING: These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action. (You may be able to hire a lawyer for a small fee to review your completed forms and talk about your problem but not represent you in court). If you need a lawyer, contact the Court Assistance Office for their *Legal Services Directory* or roster of local attorneys, or call the Idaho State Bar Lawyer Referral Service at (208) 334-4500.

For further information, please ask to see the video "**The Idaho State Court System: Family Law**" at your Court Assistance Office or public library.